IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.126 of 2001.

Dated of Decision: December 24, 2007.

State of H.P. …… Appellant.

Versus

Sanjiv and others. ……. Respondents.

Coram

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant	**:**	Mr. V.K. Verma, Addl. Advocate General.
For the Respondent	**:**	Mr. G.D. Verma, Sr. Advocate with Mr. Romesh Verma, Advocate.

Surinder Singh, J (oral):

The respondents were convicted and sentenced by the trial court for the offence under Section 452, 451, 147, 149, 323 and 506 of the Indian Penal Code, which was successfully assailed in appeal before the first appellate court. Thus while allowing their appeal, the conviction and sentence was set-aside, which has now been assailed in this appeal by the State.

I have heard the learned counsel for the parties and have carefully gone through the record.

In brief, the prosecution case has been that the complainant Dinesh Kumar had filed a complaint in the

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Whether reporters of local papers may be allowed to see the judgment? Yes.

court of Judicial Magistrate Ist Class, Rohru against the respondents and one Satish Kumar on 27.6.1995, which was sent to the Station House Officer, Police Station Rohru, for disposal in accordance with law under Section 156(3) of the Code of Criminal Procedure and on its basis, the police registered a FIR Ex.PW10/C.

It was alleged by the complainant in the complaint that the respondents and Satish Kumar after consuming liquor committed tress pass in his house at about 11.30 p.m. on 24.6.1995 and gave beating to him with the result, he sustained the injuries. While leaving the place, they threatened him with dire consequences. The police did not take any action against the respondents, therefore, he has stated to have filed the complaint on 27.6.1995 in the court. He has not given the details of the alleged incident and complaint and the FIR was also delayed by three days.

The police had investigated the case, prepared site plan Ex.PW10/A and got the complainant medically examined. He was found to have sustained the simple injuries. After recording the statements of the witnesses, the challan was presented in the court for trial against the respondents except Satish Kumar, but no explanation has been given as to why and how Satish Kumar was not involved in the alleged offence. At the end of trial, the

respondents were convicted, but instead of passing the substantive sentence, they were released by giving them the benefit of Probation of Offenders Act.

On reappraising the evidence on record, the learned Sessions Judge in appeal found no convincing reason for convicting the respondents, for the offences charged. Therefore, they were acquitted.

On reappraising the evidence, it is apparent that the complainant has not specified as to how and in what manner the incident had taken place, but as PW4, he had substantially improved his version. According to him, on 24.6.1995 at about 11 p.m., he alongwith Desh Raj, Krishan Dass and Mohan Lal were busy in talking with each other to purchase a piece of land in front of the building of Sh. Mohan Lal. In the meantime, his ex-driver Satish Kumar came there in a drunken state. He asked the complainant how he could purchase the land when he is unable to pay even his salary. The complainant scolded him, but thereafter he caught hold the complainant from his shirt collar and gave a slap. Desh Raj intervened and thereafter both of them went to their respective residences. After taking the meals, he went to console his wife, who was weeping to mourn the death of her near relative. Then around 11.30 p.m., he saw Dharam Pal alongwith 6-7 persons outside knocking on

his door. When his daughter opened the door, the said Dharam Pal and Sanjeev respondents told him to come out and when he did not go out, they entered inside and dragged the complainant out of his room and threatened him with dire consequences. When his daughter intervened, Sanjeev Kumar gave slaps to her. His wife also came there but she was pushed aside. When Dharam Pal (accused) and Sanjeev Kumar wanted to throw him out of the verandah, he skidded on the wet floor and fell down. Thereafter Sanjeev Kumar set on his chest and gave beating with fist blows and he sustained the fracture to his little finger. The complainant was released from the clutches of said persons by K.C. Negi. He went to report the matter to police, but no report was lodged and they insisted on compromise. Therefore, he approached the court and filed a complaint Ext.PW1/A.

In his cross-examination, he has admitted that Desh Raj had appeared as a witness against him in the cases filed by him. He was confronted with his complaint, wherein all these details including causing of fracture of his little finger were not mentioned. To substantiate his version, neither the Doctor was examined nor his medico legal certificate was exhibited. There is no evidence of causing the injuries or the fracture, as alleged by him. Further to corroborate his version, the prosecution

examined his daughter Sunita Sood, but she id not say that she had intervened when the respondents Dharam Pal and Sanjeev Kumar had given beatings to her father, but according to her, their neighbourer had intervened and saved her father. She has admitted that their neighbourer Anil Kumar, Sukhwinder, Mithu Lal were present there at the time of alleged incident, but out of them, no-one has been examined to led strength to their version. She has also admitted that the respondents and her father were in litigation in court for quite some time past.

PW3 Sangeeta is the wife of the complainant. In her cross-examination, she has stated that K.C.Negi, Anil Kumar and Ajudhaya Prasad had witnessed the alleged occurrence and further admitted that with respect to the said incident, there was a compromise.

PW4 Yashwant Singh has stated that he could not identify the persons who picked up the quarrel with the complainant.

DeshRaj (PW5) in his cross-examination has stated that the nose of Satish Kumar was bleeding. Satish had gone weeping to his house and there was some quarrel between Naresh and Satish.

Anil Kumar (PW6) could not identify other persons except Sanjeev Kumar, but his further examination does

not show that he had in fact witnessed the alleged occurrence. According to him Suresh Kumar (PW7) had witnessed the entire occurrence.

A perusal of the testimony of PW-7 shows that he saw some persons making noise on the road and he told them to leave the place, as many families are residing and they went towards the office of S.D.M.

PW-8 Santosh Kumari had also heard some noise from outside and her neighbourer Suresh Kumar came out and due to darkness, she could not identify the persons present there. PW-9 and PW-10 did not support the case of the prosecution.

In their statements under Section 313 of the Code of Criminal Procedure, the respondents have stated that the complainant was having litigation with them. Due to strained relations, the complainant was actuated with malice and foisted a false case against them by making his wife, daughter and wife's God brother as false witnesses. In fact Desh Raj has given beatings to Satish Kumar his driver but later he sided with the complainant and was not made an accused.

On a careful perusal of the above evidence, I have noticed that there are lot of improvements in the statements of the complainant and his witnesses. The manner in which the occurrence had taken place had not

been explained in the earlier version by the complainant. Complainant, his daughter and wife had given a different version to that of Yashwant Singh, Anil Kumar and Suresh Kumar, the independent alleged eye witnesses. In totality of the circumstances as discussed above, the case of the prosecution does not inspire confidence and the first appellate court had taken the note of contradictory stand in their testimonies and rightly disbelieved their version.

For the aforesaid reasons, I do not find anything which could impel me to interfere with the findings of the first appellate court as the same is born out from the record. Therefore, the appeal is dismissed.

The respondent is discharged of his bail bonds entered upon by him at any time during the proceedings of the case.

Send down the records.

December 24, 2007. **(Surinder Singh)**
(Pds) **Judge.**